

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

IMRAN KHANANI,

Defendant-Appellee.

UNPUBLISHED

March 1, 2012

APPROVED FOR
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April 10, 2012

No. 301138

Wayne Circuit Court

LC Nos. 09-030086-FJ;
10-001149-FH;
10-003752-FH

Advance Sheets Version

Before: DONOFRIO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

STEPHENS, J. (*dissenting*).

I write to respectfully dissent from the conclusion of the majority that the trial court abused its discretion by affording the defendant status under the Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq.*, through a sentence that requires incarceration, participation in treatment programs, employment, and a return to school. While I agree that the majority has correctly articulated the law applicable to this circumstance, I do not share its view that the trial court has sufficiently articulated the reasons for the sentence imposed and, therefore, would remand for further articulation of that reasoning.

HYTA is one of the possible sentencing options afforded to trial courts. Like every other sentencing option, there are four purposes of a HYTA sentence: protection of society, punishment of the offender, deterrence from further criminality by the offender or others, and rehabilitation. See *People v Sabin (On Second Remand)*, 242 Mich App 656, 661-662; 620 NW2d 19 (2000). As with all sentences in Michigan, the sentence must be particularized to the individual and the offense. The majority correctly notes that if the trial court's basis for the sentence was to protect and preserve defendant's family, that reason is not within the range of principled outcomes, in part because it is a sentence that is not rooted in factors peculiar to the defendant himself. After all, every offender has some form of family. However, after a careful reading of a fairly lengthy sentencing transcript, I am not left with a firm conviction that protection or preservation of defendant's family was either the sole or the primary purpose of the HYTA sentence.

In a freewheeling colloquy with defendant, the trial court discussed defendant's immaturity and his intense desire to fit into some group as a result of his feelings of academic inferiority. It appears that, from that dialogue, the court implicitly found defendant to be more of a follower than a leader. The court seemed to perceive that, in part because of his family support, immaturity, insecurity, and developing self-examination, he was susceptible to rehabilitation. The court ordered his participation in jail programming, albeit without nominating specific programs, as an aid to the rehabilitative process. In fact, the court required that this defendant be exempt from jail crowding release without the trial court's permission. That caveat would allow the trial court to review not only whether defendant participated in jail programming, but also whether he benefited from the programming, much in the same manner as a court would monitor compliance with a parent-agency agreement. A failure to benefit or participate might well be a basis to revoke HYTA status. The court emphasized that failure to meet his HYTA requirements could result in a sentence that would dwarf the presumptive sentence under the sentencing guidelines that he would face had he not been granted HYTA status. This warning addresses the deterrence aspect of sentencing. The incarceration would have addressed the goals of punishment of the offender and protection of society.

While I do not believe that the trial court based its extraordinary sentence on the desire to preserve and protect defendant's family, it is unclear which factors ultimately did motivate the court's decision to exercise its discretion in this manner. I believe a remand for a full articulation of the basis of the trial court's decision is required, and I would remand the case to accomplish that objective.

/s/ Cynthia Diane Stephens